



**Ninety-Seventh Legislature - First Session - 2001**  
**Committee Statement**  
**LB 448**

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**Hearing Date:** February 15, 2001  
**Committee On:** Natural Resources

**Introducers:** (Beutler)

**Title:** Provide for a covenant not to sue under the Petroleum Products and Hazardous Substances Storage and Handling Act

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**Roll Call Vote – Final Committee Action:**

Advanced to General File  
X Advanced to General File with Amendments  
Indefinitely Postponed

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**Vote Results:**

8	Yes	Senators Bromm, Bruning, Hudkins, Jones, Kremer, Preister, Schrock, Stuhr
0	No	
0	Present, not voting	
0	Absent	

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**Proponents:**

Senator Chris Beutler  
Bob Hallstrom

**Representing:**

Introducer  
Nebraska Bankers Association

**Opponents:**

None

**Representing:**

**Neutral:**

None

**Representing:**

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**Summary of purpose and/or changes:**

LB 448 does the following:

Section 1: Adds a reference to another portion of the statute.

Section 2: Adds a reference to additional portions of the statute.

Section 3: Places the definition of petroleum products in its own subsection instead of being defined in the section on regulated substance.

Section 4: Corrects an internal reference to correct numbering sequence.

Section 5: Allows the Department of Environmental Quality to issue a certificate of completion to a responsible person for an approved remedial action plan once that plan is completed.

- \* The certificate shall state that no further remedial action needs to be done at the site relating to any contamination for which remedial action has been taken in accordance with the approved plan.

- \* The certificate may be conditioned. The Department may require additional monitoring or controls which may be necessary and which were relied upon by the responsible party to demonstrate compliance.

- \* The form of the certificate must be filed in the county where the property is located by the Department within 10 days after the certificate is issued.

- \* The certificate relieves the responsible party from any liability to perform additional assessments, remediation, or response action with regard to the release for which the responsible party has already complied with the Department's requirements.

- \* The certificate constitutes a covenant not to sue by operation of law; but, it can be revoked upon the following conditions:

- 1) if the responsible party fails to conduct additional remedial action as required;
- 2) if the Department determines that fraud or misrepresentation was used to obtain the certificate, and under such conditions, the Department must file with the county of record that the certificate has been revoked within 10 days of the revocation; or
- 3) if the party fails to comply with the monitoring of institutional or technological controls.

- \* The certificate of completion shall require the responsible person to conduct additional remedial action in the event that any monitoring indicates (a) contamination is reoccurring; (b) additional contamination is present for which remedial action was not taken according to the plan; or (c) contamination presents a threat to human health or the environment and was not addressed in the remedial action plan.

- \* If the responsible party transfers ownership to an affiliate to obtain a benefit to which the transferor would not be entitled, then the affiliate cannot obtain the benefit, and would be subject to the same obligations as the transferor.

- \* The covenant not to sue shall bar any suit against any person who acquires title to the property; and, any person who purchased the site before the effective date of this act if that person has received a certificate of completion or received a no further action letter, so long as the releases or consequences were not caused or contributed to by that person.

Section 6: Upon the issuance of the certificate of completion, the responsible party shall have no additional liability for releases that were the subject of the approved remediation plan.

Section 7: There is no admission of liability if a person participates in a remediation plan; nor may the fact the responsible person has participated in remediation be admitted into evidence; and participating in the plan shall not be an acknowledgement that the conditions constitute a threat or danger to the public health or safety of the environment.

Section 8: Repealer.

**Explanation of amendments, if any:**

The committee amendment strikes the original sections of the bill and becomes the bill.

Relocates the definitional language of section 3 (5)(b) to section 3 (5), and renumbers the following sections.

The substantive changes to statute occur in sections 5, 6, and 7.

Section 5: Allows the Department of Environmental Quality to issue a certificate of completion stating that no further remedial action needs to be taken at the site relating to any contamination for which remediation has been done in accordance with the approved remedial action plan.

- \* Requires the DEQ to condition the certificate of completion upon compliance with any monitoring, institutional, or technological controls that may be necessary, and which were relied upon by the responsible person to demonstrate compliance with the remedial action plan.

- \* Requires the responsible person to file the certificate of completion in the real estate records of the county in which the remediation took place, and notify the DEQ as to the time and place of filing.

- \* When the DEQ issues a certificate of completion, a covenant not to sue arises as a matter of law. This releases the responsible party from liability to the state, and from liability to perform additional environmental assessment, remedial activity, or response action with regard to the release of a petroleum product for which the responsible person has complied with requirements.

- \* Provides that the covenant not to sue shall be void if the responsible person fails to conduct additional required remediation, if the certificate of completion is revoked by the Department due to fraudulent representations made by the responsible person or false certification to the Department, or if the responsible person fails to comply with the monitoring, institutional, or technological controls upon which the certificate was conditioned.

- \* Provides that the same obligations of the responsible person shall be imposed upon the affiliate of the responsible person if the responsible person transfers title of the subject real property to an affiliate.

\* States that the covenant not to sue shall act as a bar against any person who acquires title to property to which a certificate of completion applies for all claims of the state or any other person in connection with petroleum products which were the subject of an approved remedial action plan, except for releases or consequences that the person contributed to or caused, for failure to comply with the monitoring, institutional, or technological controls upon which the certificate of completion was conditioned, or in the event the certificate of completion is revoked by the Department.

\* Allows the person who purchased the property and is ordered by the Department to take remedial action to be eligible for reimbursement as a responsible person; however, this person would not be required to pay the first cost or percent of the remaining cost unless such person contributed to or caused the release or failed to comply with the conditions imposed by the Department.

Section 6: Releases the responsible person from liability to the state as to the release of petroleum products for which compliance with the remedial action plan is demonstrated.

Section 7: Participation in a remedial action plan does not constitute an admission of liability, nor is it admissible in any civil, criminal, or administrative proceeding other than to enforce compliance with the certificate of completion or its revocation.

\* Participation in a remedial action plan shall not be construed to be an acknowledgment that the conditions of the affected area constitute a threat or danger to the public health or safety or the environment.

Section 8: Repealer.

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**Senator Ed Schrock, Chairperson**